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House Bill No. 5407
AN ACT CONCERNING PROBATE FEES

Judiciary Committee Public Hearing

March 12, 2010

Representative Lawlor, Senator McDonald and members of the Judiciary Committee, my name is Judith Hoberman. I am Chair of the Connecticut Bar Association's Elder Law Section, and I practice law in Hamden. I am here today to testify in general support of House Bill No. 5407, An Act Concerning Probate Fees, but request an amendment to provide for hardship exceptions to the interest provisions of the bill.

Background: Probate Administration has proposed this bill to address some changes in the application of probate fees for decedent estates. We support legislation that prohibits probate courts from assessing fees with respect to a decedent's estate based on the value of real property not situated in Connecticut, and to prohibit courts from assessing fees against ancillary estates based on state assets not located in this state.

Our specific concern is that portion of this proposal that seeks to amend Conn. Gen. Stat. Sec. 45a-107 in NEW subsection (l) of the statute. That provision has language that will impose an interest at the rate of 0.5% per month on unpaid probate costs for decedents who die on or after January 1, 2011.

Specific Concerns: An across the board implementation of this interest penalty will have unintended consequences. While subsection (l) (3) of the raised bill provides for an extension for payment of costs, including interest, for reasonable cause shown, the bill fails to provide language that addresses a hardship exception. We respectfully submit that the bill should contain additional language that provides that, for reasonable cause shown, interest may be waived entirely by the probate court from its due date.

The bill seeks to impose interest from the time that a Connecticut Estate Tax Return would have had to be filed (nine months from date of death) until payment of the assessed fee. Probate courts in Connecticut assess their fees based on the gross taxable estate reported on the estate tax return and filed with the probate court, regardless of whether an estate is actually probated to pass assets.

When couples or siblings own property jointly and one dies, it is generally believed by the public that there is no need for probate court involvement. Therefore, nothing is filed in the probate court. However, Connecticut law requires the filing of an Estate Tax Return with the probate court. Often, many years later, when jointly owned real estate is being sold or mortgaged, a return must be filed to make that property marketable. This results in a substantial amount of interest being imposed. Two examples are illustrative.

Example #1. An unrepresented widow, with all estate assets joint, does not file anything at the probate court on the death of her spouse. However, 15 years later, when the marital home is sold to pay for the assisted living facility she now requires, a "Certificate Releasing Connecticut Estate Tax lien" for the deceased spouse will be necessary to record on the land records to complete the sale. The surviving spouse will then be required to pay interest @ 0.5% per month (6% per year) for 15 years on the costs assessed (probate fees).

Example #2. Same fact pattern as above, only this time the surviving spouse dies 20 years after her husband, leaving her entire interest in the home to her adult disabled child who has always lived in the home. Ten years later, lacking sufficient income, the adult disabled child applies for a reverse mortgage in order to remain in the home. He now requires two Certificates Releasing Connecticut Estate Tax Lien, one for the deceased mother and another for the deceased father. Both certificates must be recorded on the land records to qualify for the reverse mortgage. The adult disabled child will then be required to pay interest @ 0.5% per month (6% per year) for 20 years on the costs assessed (probate fees) for his father's estate and 10 years for his mother's estate.

Enforcement Issues: Under Connecticut's strict budgetary constraints, it is not realistic to believe there will be an "enforcement division" created to seek out all individuals that fail to file an Estate Tax Return. In practice, enforcement will only occur in estates with real property when that property is sold or mortgaged. This system is not fair or equitable. This proposal is likely to have a disproportionate impact on the vulnerable in our state, individuals such as widows and disabled who are of low income and modest means. It is unlikely that any enforcement will occur for those estates of wealthy individuals, who do not own real property at the time of their death, and never file an Estate Tax Return.